

IN RE: PETITION FOR ZONING VARIANCE
58/Corner Yorkward and
Dunvale Road
9th Election District
4th Councilmanic District
Hampton Apartments Ltd. Part.
Petitioners

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 90-126-A
Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit a setback of 55 feet from the centerline of Dunvale Road in lieu of the required 60 feet in accordance with Petitioner's Exhibit 1.

The Petitioners, by Fred Walker, President, Timothy House, Inc., Contract Purchaser of the subject property, appeared, testified, and was represented by Robert A. McLean, Esquire. Also appearing on behalf of the Petition is Ellen Brodie, Commercial Development, Inc., Consultants. Appearing as a Protester in the matter was Dr. Marian Kolobielski, a resident of Sherwood Road.

Testimony indicated that the subject property consists of 2.50 acres zoned R.A.E.-2 and is located off of Dunvale Road near its intersection with Yorkward Road. Said property is presently improved with three, three-story brick apartment buildings, formerly a part of the Hampton Apartments complex. Testimony indicated that the Contract Purchaser, Timothy House, Inc., a non-profit organization associated with the First Lutheran Church of Towson, proposes keeping two of the three apartment buildings, replacing the third structure with a six-story apartment building, and constructing an additional six-story building for purposes of providing affordable housing for the elderly. Ms. Brodie, Project Manager for Commercial Development, Inc., Consultants for Timothy House, Inc., tes-

tified that the variance requested is necessary in order to position one of the six-story buildings in such a manner that it will be in keeping with the aesthetic character and nature of surrounding townhomes and apartments. While Petitioners concede that no variance would be needed if the building was located north/south instead of east/west, Ms. Brodie and Mr. Walker testified that the proposed location and design of the building were agreed upon after much negotiating with representatives of the Towson Park community, the adjoining neighbors. Mr. Walker, a landscape architect and planner, presented testimony regarding the proposed buildings being within the spirit and intent of the zoning regulations and not resulting in any detriment to the health, safety and general welfare of the community. He further testified as to the proposed development exceeding the amenity open space requirements and the heights of the buildings being much less than that permitted under the regulations. However, Mr. Walker stated that he felt that the height and design of the buildings proposed were more in keeping with the surrounding two-story residential uses. Petitioners further agreed to comply with the requirements of the Office of Planning as set forth in their comments dated September 29, 1989.

Dr. Kolobielski testified in opposition to Petitioner's request, emphasizing the need for strict enforcement of the zoning regulations and argued that the placement of the building 5 feet closer to Dunvale Road could present a safety problem. However, no evidence to support his position was presented.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that called for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 13th day of October, 1989 that the Petition for Zoning Variance to permit a setback of 55 feet from the centerline of Dunvale Road in lieu of the required 60 feet in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

- 2) Compliance with all Zoning Plans Advisory Committee comments, including, but not limited to, the requirements of the Office of Planning as set forth in their comments dated September 29, 1989, attached hereto and made a part hereof.

ANN R. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

ANN:bjs

ORDER RECEIVED FOR FILING
Date 10/13/89
By [Signature]

ORDER RECEIVED FOR FILING
Date 10/13/89
By [Signature]

PETITION FOR ZONING VARIANCE
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 201.3.C.1 to allow a 55 ft. setback from centerline of Dunvale Road, in lieu of the required 60 ft.

To the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, following reasons: (Indicate hardship or practical difficulty)

To be determined at hearing

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

Contract Purchaser:
Timothy House, Inc.
(Type or Print Name)
Signature Wm. Fred Walker, IV
First Lutheran Church of Towson
40 East Burke Avenue
Towson, Maryland 21204
City and State

Legal Owner(s):
Hampton Apartments Limited
Partnership
(Type or Print Name)
Signature Jack H. Pechter, General
Partner
(Type or Print Name)

Attorney for Petitioner:
John B. Howard
(Type or Print Name)
Signature [Signature]
210 Allegheny Avenue
Towson, Maryland 21204
City and State

Attorney's Telephone No.: 823-4111

ORDERED By The Zoning Commissioner of Baltimore County, this 12 day of 1989.

That the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-out Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 104, County Office Building in Towson, Baltimore County, on the 6 day of Oct, 1989, at 9:30 o'clock.

J. Robert Hineault
Zoning Commissioner of Baltimore County

DAFT MCCUNE WALKER, INC. 200 East Pennsylvania Avenue Towson, Maryland 21204 301 296 3333 FAX 301 296 4705
Land Planning & Development Consultants

Description

To Accompany Zoning Petition

1.998 Acre Parcel

Southeast Side of Yorkward Road

Northwest Side of Dunvale Road

Ninth Election District, Baltimore County, Maryland

Beginnir for the same at the end of the second of the two following courses and distances measured from the intersection of the centerline of Yorkward Road, 60 feet wide, with the centerline of Dunvale Road, 60' wide (1) Northwesterly 110', more or less, measured along the centerline of Yorkward, and thence running (2) Southwesterly at right angles to said centerline 25 feet, more or less, thence leaving said point of beginning and said southwest side of Yorkward Road and running and binding on said northwest side of said Dunvale Road, referring all courses of this description to the Grid Meridian established in the Baltimore County Metropolitan District, the four following courses and distances, viz: (1) Southwesterly by a line curving to the right with a radius of 20.00 feet for a distance of 43.06 feet (the arc of said curve being subtended by a long chord bearing South 30 degrees 15 minutes 24 seconds West 35.21 feet, thence (2) North 88 degrees 04 minutes 10 seconds West 31.25 feet, thence (3) Southwesterly by a line curving to the left with a radius of 260.00 feet for a distance of 155.00 feet (the arc of said curve being subtended by a long chord bearing South 14 degrees 50 minutes 42 seconds West 152.72

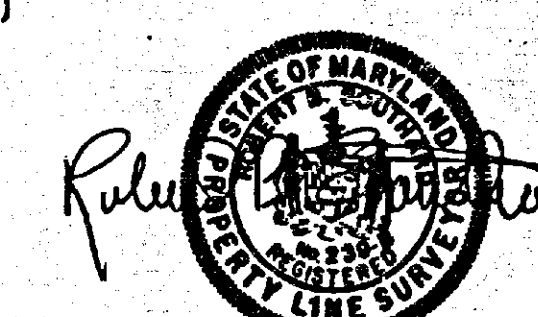
Page 1 of 2

feet), and thence (4) South 57 degrees 45 minutes 59 seconds West 339.88 feet, thence leaving said northwest side of Dunvale Road and running, the two following courses and distances, viz: (5) North 31 degrees 41 minutes 26 seconds West 150.00 feet, and thence (6) North 57 degrees 45 minutes 59 seconds East 544.32 feet to intersect the abovementioned southwest side of Yorkward Road, thence running and binding on said southwest side of Yorkward Road (7) South 31 degrees 25 minutes 01 second East 196.15 feet to the point of beginning; containing 1.998 acres of land, more or less.

THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED TO BE USED FOR CONVEYANCE.

June 9, 1989

DWM Project No.: 88091 (L88091)



Page 2 of 2

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME: Robert Hoffman
ADDRESS: 210 Allegheny Ave 21204
EVEN BRODIE 2330 W. JOPPA RD. STE. 355
Commercial Development, Inc. (Petitioner)
In order prepared - 7

PROTESTANT(S) SIGN-IN SHEET

NAME: DR. MARIAN KOLOBIELSKI
ADDRESS: 6710 SHERWOOD ROAD (SAWM) 21239
GAY TO Barbara Ramsey Towson Times 429 Washington

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th
Posted for: Variance
Petitioner: Hampton Apartments Limited Partnership & Timothy House, Inc.
Location of property: 58/51 Yorkward Rd. & Dunvale Rd.
Location of Sign: 58/51 Yorkward Rd. & Dunvale Rd.
Remarks: For issuance of Zoning Variance
Posted by: [Signature]
Date of return: 9/15/89
Number of Signs: 7

CERTIFICATE OF PUBLICATION

TOWSON, MD. Sept 7, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Sept 7, 1989.

THE JEFFERSONIAN
TOWSON TIMES,
S. Zake Orlan
Publisher

PO 16311
29 M 3481
CO 90-126-1
PUCO 89529

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(801) 887-3353

J. Robert Haines
Zoning Commissioner

DATE 9/12/89

Timothy House, Inc.
First Lutheran Church of Towson
40 East Burke Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance
CASE NUMBER: 90-126-A
Corner SW/S Yorkward Road & NW/S Duvale Road
5th Election District - 4th Councilmanic
Legal Owner(s): Hampton Apartments Limited Partnership
Contract Purchaser(s): Timothy House, Inc.
HEARING SCHEDULED: FRIDAY, OCTOBER 6, 1989 at 9:30 a.m.

Gentlemen:

Please be advised that \$ 20.27 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204 (15) minutes before your hearing is scheduled to begin.

Be advised that should you fail to return the sign & post set(s), there shall be a \$50.00 added to the above amount for each such set.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 9/25/89 ACCOUNT R 01-615-000

AMOUNT \$ 120.29

RECEIVED FROM Timothy House, Inc.

FOR 90-126

VALIDATION OR SIGNATURE OF CASHIER

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(801) 887-3353

J. Robert Haines
Zoning Commissioner

August 18, 1989

NOTICE OF HEARING

Dennis F. Hammussen
County Executive

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 108 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Zoning Variance
CASE NUMBER: 90-126-A
Corner SW/S Yorkward Road & NW/S Duvale Road
5th Election District - 4th Councilmanic
Legal Owner(s): Hampton Apartments Limited Partnership
Contract Purchaser(s): Timothy House, Inc.
HEARING SCHEDULED: FRIDAY, OCTOBER 6, 1989 at 9:30 a.m.

Variance to allow a 55 ft. setback from centerline of Duvale Road, in lieu of the required 60 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

JRHigs
cc: Timothy House, Inc.
Hampton Apartments Limited Partnership
John B. Howard, Esq.
File

BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL
PROTECTION AND RESOURCE MANAGEMENT

7/12/89
DATE

Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Zoning Item # 583, Zoning Advisory Committee Meeting of July 11, 1989

Property Owner: Hampton Apartments Limited Partnership

Location: corner of SW/S Yorkward Rd, NW/S of Duvale Rd District: 9

Water Supply: meteo Sewage Disposal: meteo

COMMENTS ARE AS FOLLOWS:

- Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Suite 110 of Regional Community Services, for final review and approval.
- Prior to new installation(s) of fuel burning equipment, the owner shall contact the Bureau of Air Quality Management, 887-3775, to obtain requirements for such installation(s) before work begins.
- A permit to construct from the Bureau of Quality Management is required for such items as spray paint processes, underground gasoline storage tank(s) (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.
- A permit to construct from the Bureau of Air Quality Management is required for any charcoal grill generation which has a total cooking surface area of five (5) square feet or more.
- Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.
- Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, saunas, whirlpools, hot tubs, water and sewerage facilities or other appurtenances pertaining to health and safety; two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Environmental Protection and Resource Management for review and approval. For more complete information contact the Water Quality Monitoring Section, Bureau of Regional Community Services, 887-6500 x 315.
- Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations for more complete information, contact the Division of Maternal and Child Health.
- If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with the State Department of the Environment.
- Prior to razing of existing structure(s), petitioner must contact the Division of Waste Management at 887-3745, regarding removal and/or disposal of potentially hazardous materials and solid wastes. Petitioner must contact the Bureau of Air Quality Management regarding removal of asbestos, 887-3775.
- Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and tank removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Waste Management at 887-3745.
- Soil percolation tests, have been must be conducted.
() The results are valid until
() Soil percolation test results have expired. Petitioner should contact the Division of Water and Sewer to determine whether additional tests are required.
- Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County Standards must be drilled.
- In accordance with Section 13-117 of the Baltimore County Code, the water well yield test
() shall be valid until
() is not acceptable and must be retested. This must be accomplished prior to conveyance of property and approval of Building Permit Applications.
- Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.
- If submission of plans to the County Review Group is required, a Hydrogeologic Study and an Environmental Effects Report must be submitted. For more information contact the Division of Environmental Management at 887-3980.
- In order to subdivide this property, the owner or developer will be required to comply with the subdivision regulations of the State of Maryland and Baltimore County. If there are any questions regarding the subdivision process, please contact the Land Development Section at 887-2762.
- Others

L. D. Edmund
BUREAU OF WATER QUALITY AND RESOURCE
MANAGEMENT

Baltimore County
Fire Department
800 York Road
Towson, Maryland 21204-2586
(801) 887-4500

Paul H. Rabeck
Chief

JULY 19, 1989

Dennis F. Hammussen
County Executive

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: PURCHASER: TIMOTHY ROUSE, INC.
Location: CORNER OF SW/S OF YORKWARD ROAD
Item No.: 583 Zoning Agenda: JULY 11, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 301 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: *Pat Keller* Noted and Approved: *Capt. Wm. R. Boudry*
Planning Group Fire Prevention Bureau
Special Inspection Division

JK/KEK

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Hampton Apartments Limited Partnership, Item 583
Zoning Petition No. 90-126A

DATE: September 29, 1989

The petitioner requests a Variance to allow a 55 ft. setback from the centerline of Duvale Road, in lieu of the required 60 ft.

In reference to this request, staff offers the following comments:

- Since Yorkward Road has been formally closed, the parking area should be screened from Fairmount Avenue.
- Amenities such as benches and picnic tables should be incorporated into open space areas.
- A landscape plan must be submitted for approval prior to the issuance of any building permits.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/pat

RE: Late Comments - 11/14/89

